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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]

DECISION

FCP/145517

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 27, 2012, under Wis. Admin. Code § DHS 10.55, to review a decision by the Family Care program to deny a request for certain medical equipment, a hearing was held on January 29, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Family Care Program (FCP) correctly denied a request from Petitioner for a shower chair with a lift and a toilet seat with a riser.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Laura Watt, FCP case manager

ANEW

Family Care Program case management organization  
Milwaukee, WI

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. Petitioner filed this hearing request to contest the denial of a request for a shower chair with a lift and toilet seats with a riser.
3. Petitioner has suffered a cerebral vascular accident. She does not speak. She is diabetic but not on insulin. She also has a history of hyperlipidemia, hypertension and bladder incontinence.
4. Petitioner uses a wheelchair though Family Care personnel have noted that she can ambulate a short distance in her home with a cane.
5. Petitioner receives 30 hours of supportive home care hours and 19 hours of personal cares per week. The daughter is Petitioner's paid caregiver.
6. While a detailed estimate was not available at the hearing for the shower chair with a lift. The cost is estimated by Family Care personnel to be \$3,000.00 to \$4,000.00.
7. The Family Care Program has supplied a bench that spans the wall of the tub to permit Petitioner to slide into the shower. The cost of that was about \$100.00.
8. The Family Care Program has also offered raised toilet seats and a hand held shower sprayer.
9. Petitioner was also getting a bath at her day program twice a week but that was discontinued by Petitioner and/or her daughter.

### **DISCUSSION**

The Family Care Program, which is supervised by the Department of Health and Family Services, is designed to provide appropriate long-term care services for elderly or disabled adults. *Medicaid Eligibility Handbook (MEH)*, §29.1. It is authorized under Wisconsin Statutes, §46.286, and is described comprehensively in the *Wisconsin Administrative Code at Chapter DHS 10*. The program is operated and administered in each county by a Care Management Organization (CMO), which in this case is Community Care, Inc. Though Family Care enrollees are full partners in the assessment of needs and strengths and in the development of care plans those plans are subject to the general requirements and limitations outlined for the program, including the requirement that a service be cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes. *Wis. Admin. Code*, §§ *DHS 10.44(2)(e) & (f)*. Medical assistance and its subprograms are meant to provide only basic and necessary health care.

In the Family Care Program (FCP), a case management organization (CMO) must develop an Individual Service Plan (ISP) in partnership with the client. *Wis. Admin. Code*, §*DHS 10.44(2)(f)*. The ISP must reasonably and effectively address all of the client's long-term needs and outcomes to assist the client to be as self-reliant and autonomous as possible, but nevertheless must be cost effective. While the client has input, the CMO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. *Wis. Admin. Code*, §*DHS 10.44(2)(f)*; *DHS booklet, Being a Full Partner in Family Care*, page 9.

Petitioner's daughter represented her at the hearing. She indicated that the landlord is upset with her family because too much water splashes on the floor during Petitioner's showering. She indicated that the landlord has glued on the shower head and forbids the family to install a handheld shower sprayer. She indicated that she discontinued the day program baths because they were not doing as of a good job causing Petitioner to break out in a rash or skin infection. As alternatives were discussed with Petitioner's daughter she became angry and left the hearing.

I am upholding the denial of the requested lift chair. There are several reasons. Petitioner has other alternatives though the family is reluctant to use them. These include extra towels on the floor, multiple shower curtains and other physical arrangements of, or modifications to, the shower curtain(s). Further,

while Petitioner's daughter indicates that the day program was not doing an adequate job in bathing Petitioner thereby causing infections, the agency/FCP representative suggested that the three-foot iguana kept in the home bathtub could be the source of the infection as the animals are known to carry various diseases. Finally, the family is likely moving very shortly as the apartment is on the second floor and the landlord has not fixed the elevator. Given these circumstances this is not a close call - it is not cost effective to provide the requested shower chair with a lift.

Finally, the Family Care Program has been willing to provide the specialized toilet seats. Though these may not have been acceptable to Petitioner or her daughter there is no explanation as to why.

### **CONCLUSIONS OF LAW**

1. That the evidence is not sufficient to demonstrate that the requested shower chair with a lift meets the standards necessary for approval for payment by the Family Care Program.
2. That the evidence indicates that the Family Care Program has been and is willing to provide toilet seats with a riser to meet Petitioner's needs.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

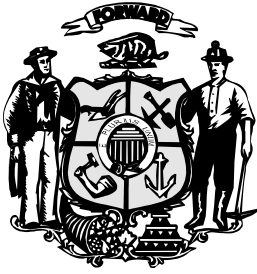
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 25th day of February, 2013

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on February 25, 2013.

Milw Cty Dept Family Care  
Office of Family Care Expansion